STANDARD FORM NO. 64

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Office Memorandum • UNITED STATES GOVERNMENT

TO : FE - Mr. Allison

DATE: March 23, 1953

FROM : NA - Mr. Young

SUBJECT: Disposition of Two FCN Treaty Questions

DEPARTMENT OF STATE
ASSISTANT SECRETARY
FOR EASTERN AFFAIRS

Within the past week there have been several exchanges of telegrams with Tokyo concerning two FCN treaty questions: (1) application of the reciprocity principle to the right of national banks of United States to engage in banking in Japan, and (2) the continuance for a three-year period of Japanese restrictions on the purchase of Japanese securities by aliens.

Application of Reciprocity Principle to National Banks

The draft FCN treaty recognizes (paragraph 2 Article 7) that Japan may deny national treatment to Americans seeking to engage in banking enterprises involving depository or fidiciary functions, but requires Japan to grant MFN treatment to Americans in such cases provided that reciprocal treatment is extended to Japanese in the United States. The Japanese objected to the language we originally proposed for the proviso about reciprocal treatment because it could not be applied to national banks. We have proposed as a consequence that the proviso be changed to read:

> "Japan shall not be obliged by the terms of that paragraph (the paragraph requiring Japan to grant MFN treatment to Americans seeking to establish banking enterprises in Japan) to accord to (banking) enterprises of nationals and companies of the United States more favorable treatment than the state in which such national is domiciled, or pursuant to the laws of which such company is organized, or in which, if such company is organized under federal law, such company has its principal office, accords to enterprises of nationals or companies of Japan."

We believe the insertion of the underlined language will satisfy the Japanese.

The application of the reciprocity principle to Japan's obligation to grant MFN treatment to American enterprises seeking to start a new banking business in Japan does not affect Japanese assurances in the treaty that national treatment will be accorded to American enterprises already engaged in the banking business in Japan

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in Japan, such as Chase, National City and the Bank of America. The Embassy has assured us this point is absolutely clear. The qualification that MFN treatment need not be granted in the absence of reciprocity would apply only in a future case where an American enterprise wishes to enter Japan to do a banking business. And even in such a case once the American enterprise has been admitted to do business in Japan, it must be accorded national treatment.

Recognition in FCN Treaty of Right of Japanese to Restrict for 3 Years Purchases with Yen by Aliens of Outstanding Shares in Japanese Companies

Paragraph 1 of Article 7 of the draft FCN treaty between Japan and the United States provides that nationals and companies of either country shall be accorded national treatment with respect to engaging in ordinary business activities in the other country either by establishing branches or subsidiaries, or by acquiring majority interests in companies of the other party. Ordinary business activities include all business activities except public utilities, shipbuilding, transport, banking or exploitation of land or other natural resources, which, as indicated in the first section of this memo, are subject to special provisions. The Embassy was authorized on March 20 to agree to add a protocol to the treaty which would provide that during a transitional period of 3 years Japan may continue to apply restrictions on the purchase with yen by aliens of outstanding shares in Japanese companies engaged in ordinary business activities.

Japan's agreement to accord national treatment to Americans seeking to engage in ordinary business activities in Japan, even when qualified by the added protocol, is regarded by CP as a substantial achievement. Before World War II it was the United States practice, in conformity with normal international practice, to provide broadly in FCN treaties for the "screening" of foreign investment in the corporate form. Of the 9 FCN treaties which the United States has negotiated since the war there are 6 in which the United States has succeeded in securing unqualified national treatment with respect to the right to engage in ordinary business activities, the treaties with Columbia, Greece, Israel, Italy, Uruguay and Denmark. The 3 treaties which contain reservations on the right are the treaties with China, Ireland and Ethiopia. Negotiation of an FCN treaty with France was suspended principally because of disagreement over the right to screen investments. The issue is of great significance in the current negotiation of the treaty with India.

The qualification on the right to invest contained in the added protocol does not detract seriously from the Japanese commitment to grant national treatment with respect to investment. The initial duration of the FCN treaty is 10 years, during the last 7 of which Japanese will be obliged to grant national treatment. Even

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during the 3-year period Japan will be under an obligation to grant national treatment to Americans seeking to make direct investments by establishing branches or subsidiaries in Japan. It is presumed from the wording of the added protocol that Japan will also be under an obligation during the 3-year period to permit Americans to purchase newly-issued securities, and to permit the acquisition of shares in Japanese companies through the furnishing of patent rights and under technical assistance contracts.

Japanese restrictions on investment by aliens were put into effect during the Occupation. We have asked the Embassy to find out what measures the Japanese expect to take in order to provide for the progressive relaxation of restrictions on the purchase of outstanding shares in Japanese companies during the 3-year period. We assume that the Japanese intend to treat applications for the purchase of Japanese securities liberally, since they have stated in other contexts that they are anxious to encourage foreign investment. We believe that in comparison with other treaties and in view of Japanese sensitivity on the right to screen foreign investments, the provisions of the treaty concerning investment are highly satisfactory.

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